

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) BOARD OF HEALTH AND
COUNTY OF RICHLAND) ENVIRONMENTAL CONTROL

INFORMATIONAL FORUM:)
)
AMENDMENTS TO)
R.61-62)
)
AIR POLLUTION CONTROL) TRANSCRIPT OF
REGULATIONS & STANDARDS)
) PROCEEDINGS
)
BUREAU OF AIR QUALITY)
STATE REGISTER DOCUMENT 3083)
)

Informational forum and public hearing
held at the South Carolina Department of Health and
Environmental Control, before Facilitator Nelson Roberts,
at South Carolina DHEC, 77 Business Center, 101 Business
Park Boulevard, Columbia, South Carolina, on Monday,
November 27, 2006, commencing at 10:23 o'clock, A.M. and
ending at 10:40 o'clock, A.M., in the above-entitled
matter.

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A P P E A R A N C E S:

DHEC Staff Present:

Nelson Roberts, Facilitator
John Hursey
Stacey Gardner
Robert Brown
Rhonda Thompson
Lynn Barnes

AMONG OTHERS PRESENT:

Mark Hollis, Duke Energy
Julie Jordan Metts, Santee Cooper
Kevin Clark, Santee Cooper
Jay Hudson, Santee Cooper
Jennifer O'Rourke, S.C. Wildlife
John Suttles, SELC
Kris Knudson, Duke Energy
Jack Preston, SCANA
Blan Holman, SELC
Debbie Parker, Conservation Voters of S.C.
Ann Timberlake, Conservation Voters of S.C.

Faye A. Grainger
Court Reporter

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P R O C E E D I N G

FACILITATOR ROBERTS: Good morning, my name is Nelson Roberts of the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, and I will be the facilitator for this informational forum.

Let the record show that this forum was convened at 10:23, A.M., on Monday, November 27th, 2006. Public notice of this forum was published in the State Register on October 27th, 2006 as Document Number 3083. Copies of the notice were also sent to a mailing list maintained by the Bureau. Unless I hear an objection, a copy of this notice will be entered into the record as though it were read.

Is there any objection? All right, the purpose of this forum is to answer questions, clarify issues and receive input from interested persons on the proposed regulation. Department staff shall consider comments received today in formulating the final draft for Department

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1 Regulation 61-62, Air Pollution Control
2 Regulations and Standards.

3 Oral and written comments received
4 shall be submitted to the Board of the
5 Department in a comment and response
6 document for the Board's consideration at
7 the public hearing to be held on January
8 the 11th, 2007.

9 The Department welcomes your input
10 and assistance in perfecting the proposed
11 regulation.

12 Does anybody have any written
13 comments they would like to submit at this
14 time?

15 MR. HOLLIS: I do. My name is Mark
16 Hollis, and I am the Duke Energy Carolinas
17 Director of Environmental Policy and
18 Affairs for our South Carolina operations,
19 and I have two documents I am submitting
20 for the record today. One is the Duke
21 Energy comments on the proposed rule and
22 the other is the Duke Energy comments on
23 the e-mail that Nelson Roberts sent on
24 November 15th.

25 MR. HUDSON: Sandy Cooper has written

1 comments. I am Jay Hudson manager of
2 environmental management at Santee Cooper.
3 We have comments to the proposed rule as
4 well as the e-mail incorporated together.

5 FACILITATOR ROBERTS: Thank you. I
6 will now present a summary and a brief
7 explanation of the proposed regulations.
8 Following this presentation any member of
9 the audience desiring to make comments
10 will be given an opportunity to do so. If
11 there any questions after a presentation
12 please direct them to me and I will either
13 respond or ask the appropriate person to
14 answer. If no one is able to answer the
15 question today an answer will be provided
16 at a later date. On March the 10th, 2005
17 and March 15th, 2005 the United States
18 Environmental Protection Agency, EPA,
19 finalized two rules known as the rule to
20 deduce interstate transport of fine
21 particulate matter and ozone, the Clear
22 Air Interstate Rule, also referred to as
23 CAIR and the standards of new performance
24 for new and existing stationary sources,
25 Electric Utility Steam Generating Units

1 also referred to as CAMR respectively.

2 CAIR was published in the Federal Register
3 on May 12th, 2005. This rule affects
4 twenty-eight states and the District of
5 Columbia. In CAIR, the EPA found that
6 South Carolina is one of the twenty-eight
7 states that contribute significantly to
8 non-attainment of the National Ambient Air
9 Quality Standards for fine particles, PM
10 2.5, and eight hour ozone and downwind
11 studies. The EPA is requiring our state
12 to revise its State Implementation Plan,
13 SIP, to reduce emissions of sulfur dioxide
14 and nitrogen oxides. Sulfur dioxide is a
15 precursor to PM 2.5 formation and NOx is a
16 precursor to both PM2.5 and ozone
17 formation. The EPA has determined that
18 electric generating units, EGUs, in South
19 Carolina contribute to non-attainment of
20 PM2.5 and eight hour ozone in downwind
21 states.

22 CAMR was published in the Federal
23 Register on May 18th, 2005. In accordance
24 with Section 111 of the Clean Air Act,
25 this rule establishes standards of

1 performance for mercury for new and
2 existing coal-fired EGUs that states must
3 adopt and requires EPA review and
4 approval. CAMR establishes a cap and
5 trade program for mercury emissions for
6 new and existing coal fired EGUs that
7 states can adopt as a means of complying
8 with the federal requirements. If a state
9 fails to submit a satisfactory plan
10 referred to as a 111(d) plan, EPA has the
11 authority to prescribe a plan for the
12 state.

13 The Department proposes to amend
14 regulation 61-62, Air Pollution Control
15 Regulations and Standards and the SIP to
16 address the requirements of the Federal
17 Clean Air Interstate Rule and the Federal
18 Clean Air Mercury Rule. The proposed
19 amendments are necessary to maintain
20 consistency with federal rules. Must of
21 EPA's finalized rules were incorporated by
22 reference, however the department is
23 exercising its discretion by proposing
24 options to the model rule that had been
25 negotiated with stakeholders and are

1 therefore better suited to South
2 Carolina's needs. Because the department
3 has chosen to differ from the federal
4 rules in areas where we have flexibility,
5 legislative review is required.

6 Examples of how South Carolina's CAIR
7 proposal differs from the Federal CAIR
8 include how NOx allocations are
9 determined. Under the Federal rule, NOx
10 allocations are based on the average of
11 the two highest annual heat input values
12 over a five year period, while our
13 proposed rule bases NOx allocations on the
14 single highest heat input value over a
15 four year period. Also, the Federal rule
16 includes a new source set-aside account
17 whereby five percent of at state's budget
18 is set aside for new sources for the
19 control periods in 2009 through 2014, and
20 three percent for 2015 and thereafter.
21 South Carolina's proposal establishes a
22 consistent three percent set-aside for new
23 sources starting in 2009.

24 Examples of how South Carolina's CAMR
25 proposal differs from the Federal CAMR

1 include allocating twenty percent of the
2 State's CAMR allowance budget to a public
3 health set-aside with conditions for use
4 by the regulated utilities. Also, South
5 Carolina's CAMR proposal does not include
6 a new source set-aside account of mercury
7 allowances for new sources.

8 The EPA has established a schedule
9 for states to submit their SIP and 111(d)
10 plan. South Carolina must submit its SIP
11 under CAIR to EPA by September the 11th,
12 2006, and the 111(d) Plan under CAMR to
13 EPA by November 17th, 2006. Due to our
14 lengthy regulation development process,
15 the Department has informed the EPA that
16 our SIP and 111(d) Plan will not be
17 submitted to them by their deadlines. The
18 EPA has already finalized a Federal
19 Implementation Plan (FIP) and 111(d) Plan
20 for states not meeting the deadline.
21 However, the EPA has assured the
22 Department that it will draw its SIP and
23 111(d) Plan when the Department finalizes
24 and submits its SIP and 111(d) Plan to
25 them.

1 The Department has previously made
2 available possible revisions based on the
3 Board's concerns raised during the
4 September 14th, 2006 Board meeting and
5 subsequent discussions with and comments
6 from the stakeholders during the
7 stakeholder meeting held on October 4th,
8 2006. These possible revisions are also
9 open for consideration and comment during
10 this meeting.

11 At this point, I will recognize
12 anyone who would like to comment on the
13 proposed regulation.

14 MR. SUTTLES: We will be submitting
15 written comments.

16 FACILITATOR ROBERTS: Please state
17 your name and affiliation.

18 MR. SUTTLES: I'm John Suttles; I'm a
19 senior attorney with the Southern
20 Environmental Law Center. We will be
21 submitting written comments, and we
22 appreciate the opportunity to do so.

23 As you know, we've been engaged in a
24 stakeholder process for over the past
25 year, and largely, our comments embody

1 positions we have taken during that
2 stakeholder process, both in terms of
3 written statements we've made and also in
4 terms of negotiations through that
5 stakeholder process.

6 But I do want to focus on one thing
7 that has been largely ignored in the
8 latter stages of those stakeholder
9 negotiations. We do again raise it in our
10 written comments. It is important, and it
11 addresses the question of what will South
12 Carolina utilities do, what additional
13 mercury reductions will they make as a
14 result of or to comply with the Clear Air
15 Mercury Rule, the Federal rule and the
16 current State proposal, and the answer is,
17 nothing, absolutely nothing. There will
18 be no additional mercury reductions that
19 will take place due to the Federal Mercury
20 Rule as currently proposed, and that's not
21 acceptable.

22 SCANA, to comply with its Clean Air
23 Interstate Rule obligations, will install
24 controls for nitrogen oxide and sulfur
25 dioxide pollution at some of its units.

1 Santee Cooper, to comply with the
2 terms of a consent decree for any source
3 of violations with EPA, will also install
4 nitrogen oxide and sulfur dioxide controls
5 on some of its units.

6 Duke proposes to do absolutely
7 nothing, either to reduce nitrogen oxide
8 or sulfur dioxide pollution or to reduce
9 mercury pollution.

10 Likewise, Progress Energy proposes to
11 do absolutely nothing to control its
12 nitrogen oxide and sulfur dioxide
13 emissions or its mercury emissions.

14 That means that in South Carolina,
15 fourteen units will go uncontrolled for
16 mercury, and that's not acceptable.

17 South Carolina's -- well, it's
18 undisputed that mercury pollution is a --
19 mercury is a toxic neurotoxin, that even
20 small amounts of mercury can contaminate
21 large bodies of waters and as a result, in
22 South Carolina, there are over sixty-eight
23 mercury efficient fish advisories that
24 cover thousands of miles of freshwater
25 streams and South Carolina's coastline and

1 tens of thousands of acres of freshwater
2 lakes in South Carolina.

3 There are a large number of people
4 living at or below the poverty line in the
5 area of these fish advisories; there are
6 large numbers of minorities that live in
7 the areas of these fish advisories, and
8 studies show that poor people and
9 minorities tend to eat more of the fish
10 they catch to supplement their diets. And
11 this means that, whereas nationwide,
12 somewhere between over three hundred
13 thousand and six hundred thousand children
14 are born every year with unsafe levels of
15 mercury in their blood. South Carolina
16 bears a high percentage of that burden
17 itself due to the nature of the water
18 bodies, the mercury pollution in the air
19 and the mercury fish advisories and the
20 people who live near them.

21 So early on, we had proposed, and we
22 again urge DHEC to require utilities in
23 South Carolina to install mercury
24 pollution controls on all sources as
25 controls are available today, they are

1 effective and they are affordable and we
2 document those facts in a comment letter.

3 It also bears noting that a number of
4 other states have taken much stronger
5 measures than are currently proposed by
6 South Carolina. A recent Green Wire
7 report noted that currently, twenty-two
8 states are proposing stronger regulations
9 than the Federal rule.

10 Just a couple of weeks ago, North
11 Carolina enacted a rule that requires the
12 maximum level of pollution reductions that
13 are technically and economically feasible
14 on all units as soon as feasible, but no
15 later than the end of 2017, and any source
16 not controlled for mercury pollution by
17 the end of 2017 must shut down.

18 South Carolina is certainly in as
19 good a position as North Carolina to take
20 such a stance.

21 What has been proposed by DHEC is to
22 retire twenty-five percent of EPA's
23 allocations to the state during the first
24 phase of the Clean Air Mercury Rule
25 between 2010 and through 2017. And then

1 to maintain those retired credits in a
2 bank and allow utilities access to those
3 credits if they need them to meet any
4 allowance requirements under the first
5 phase, and then for the first six years in
6 the second phase, have access to those
7 allowances and spend them down to meet
8 their obligations under phase two of CAMR.

9 DHEC's own analysis projects that at
10 the end of that six year window in the
11 second phase of the Clean Air Mercury
12 Rule, it will retire approximately eleven-
13 point-two percent of the allowances
14 allocated to DHEC by EPA during phase one
15 of the Clean Air Mercury Rule.

16 It's important to remember that under
17 the first phase of the Clean Air Mercury
18 Rule, EPA will allocate to DHEC nine
19 percent more allowances than uncontrolled
20 emissions in the state. That means that
21 at the end of phase two of CAMR, only two-
22 point-two percent of uncontrolled
23 emissions will actually be attributable to
24 South Carolina will actually be retired,
25 and that's simply not acceptable.

1 So we urge DHEC to take a strong
2 stand to require controls on all plants,
3 and at the very least, not to allow
4 sources in the state to reap a windfall by
5 selling allowances that are excess because
6 EPA gave South Carolina more allowances
7 than current emissions in phase one of the
8 Clean Air Mercury Rule and because the
9 utilities in the state to comply with
10 Clean Air Interstate Rule requirements and
11 a consent decree, some units will be
12 controlled for nitrogen oxide and sulfur
13 dioxide pollution resulting in a
14 coincidental reduction of mercury
15 emissions that will give them excess
16 allowances they could sell to sources in
17 other states.

18 Thanks. And we will file written
19 comments in conjunction with the testimony
20 today.

21 FACILITATOR ROBERTS: Thank you; is
22 there anybody else who would like to make
23 a statement? Okay, if there's no one
24 else, I would like to remind you that all
25 comments that have been received today

1 will be entered into the official
2 transcript of the public hearing to be
3 held by the Board on January the 11th,
4 2007. That meeting commences at ten,
5 A.M., and items will be heard in the order
6 they are published on the agenda that is
7 available approximately one week prior to
8 the date of the meeting.

9 If there are no further comments, the
10 forum is adjourned. Thank you for coming
11 here today.

12 (Thereupon, at 10:40 o'clock, A.M.,
13 the same day, the proceedings were
14 concluded)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

Be it known that I am a duly qualified court reporter; that I was hired to take the proceedings in this matter; that I took notes by stenomask of the said testimony; that the said notes were reduced to typewritten form by me; and that the foregoing eighteen (18) pages constitute a true, accurate and complete transcript, to the best of my skill and ability.

Witness my hand and seal at Columbia, South Carolina, this 26th day of December, 2006.

Faye A. Grainger
Faye A. Grainger
Notary Public for South Carolina
My Commission Expires: 5-18-2015

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Staff Informational Forum
Amendments to R. 61-62, Air Pollution Control Regulations and Standards
State Register Document No. 3083
November 27, 2006, Room 2395
SCDHEC 77 Business Center, 101 Business Park Boulevard
Columbia, SC

Synopsis: The Department proposes to amend Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the SIP, to address the requirements of the Federal Clean Air Interstate Rule (CAIR) and the Federal Clean Air Mercury Rule (CAMR).

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DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Staff Informational Forum
Amendments to R. 61-62, Air Pollution Control Regulations and Standards
State Register Document No. 3083
November 27, 2006, Room 2395
SCDHEC 77 Business Center, 101 Business Park Boulevard
Columbia, SC

Synopsis: The Department proposes to amend Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the SIP, to address the requirements of the Federal Clean Air Interstate Rule (CAIR) and the Federal Clean Air Mercury Rule (CAMR).

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